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RE: Amended Appeal Brief in response to
Notification of Non-Compliant Appeal Brief
Notification of Non-Compliant Appeal Brief mailed: 01/24/2006
Notice of Appeal Filed: October 21, 2005
Application No: 10/621,660
Applicant: Amanda Marie Worthington
Filed: 07/17/2003
TC/A.U.: 2875
Examiner: Bao Q. Troung

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Dear Sir or Madam:

Enclosed for filing and consideration please find the following:

1. Amended Appeal Brief.
2. Self-addressed, stamped return postcard.

The only amendments contained in the Amended Appeal Brief are the Amended Claims Appendix, to correct and comply with the Notification of Non-Compliant Appeal Brief, and revision throughout the Brief changing references to be in accordance with the Amended Claims Appendix. Thank you.

Yours truly,

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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AMANDA MARIE WORTHINGTON

Appeal No.
Application No. 10/621,660

**AMENDED
APPEAL BRIEF
Of
APPLICANT**

Notice of Appeal Filed: October 21, 2005

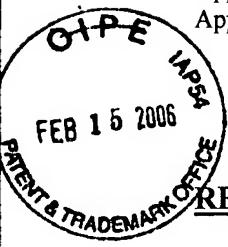
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Appeal Brief of Applicant
Notice of Appeal Filed: October 21, 2005
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Applicant: Amanda Marie Worthington
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APPEAL BRIEF

REAL PARTY IN INTEREST: There are two real parties in interest; the inventor Amanda Marie Worthington, and the Assignee WZ Enterprises, Inc.

RELATED APPEALS AND INTERFERENCES: None.

STATUS OF CLAIMS: Claims 1-24 are rejected. Claims 1-24 are being appealed.

STATUS OF AMENDMENTS: Claims 1, 2, 3, 4, 5, 8, 13, 14, 15, 16, 17, and 20 were amended after final action to limit the claims to a flexible “cable-like” electroluminescent wire. The Patent Examiner’s response was to not enter the proposed amendments because they raise new issues that would require further consideration and/or search. Specifically, the Examiner noted that the “amendment of independent claims 1 and 13, which recites a structure of the EL wire, requires a further search”.

SUMMARY OF CLAIMED SUBJECT MATTER: [For ease of locating references to citations in the application, reference will be to paragraph number as assigned in the publication of the application, page number, and line number of the paragraph cited to.]

Independent claim 1, as amended, defines an apparatus for lighting a wearable item comprising a flexible electroluminescent wire such as LyTec™ that is marketed by ELAM, Electroluminescent Industries, Ltd., with the properties as contained in the specification at page 1, paragraph 0008, column 1 lines 8-15 and page 2, paragraph 0017, lines 1-10 and as shown by reference characters 2 (EL wire), 13 (electrode), 14 (electrically insulating dielectric layer), 15 (electroluminophor layer), 16 (thin, transparent electrode), 17 (barrier layer), and 18 (transparent, flexible polymer) in Drawing Figure 3. Claim 1 further defines attaching means (page 1, paragraph 0014, lines 3-13 and page 2, paragraph 0018, lines 4-12), a power source (page 2, paragraph 0016, lines 1-12 and paragraph 0019, lines 1-6, and as shown by reference character 9

in Drawing Figure 2), a control driver (page 2, paragraph 0016, lines 1-12, and as shown by reference character 6 in Drawing Figure 2), a connecting wire (page 2, paragraph 0016, lines 3-5, and as shown by reference character 11 in Drawing Figure 2), and an outer portion and plurality of seams of the wearable item (page 1, paragraph 0014, line 1, page 1, paragraph 0015, lines 1-9, and page 2, paragraph 0018, lines 1-15, and as shown by reference character 1 in Drawing Figure 1 and reference character 19 in Drawing Figures 4 and 4A).

Independent claim 13, as amended, defines a method for lighting a wearable item comprising a flexible electroluminescent wire such as LyTec™ that is marketed by ELAM, Electroluminescent Industries, Ltd., with the properties as contained in the specification at page 1, paragraph 0008, column 1 lines 8-15 and page 2, paragraph 0017, lines 1-10 and as shown by reference characters 2 (EL wire), 13 (electrode), 14 (electrically insulating dielectric layer), 15 (electroluminophor layer), 16 (thin, transparent electrode), 17 (barrier layer), and 18 (transparent, flexible polymer) in Drawing Figure 3. Claim 1 further defines attaching means (page 1, paragraph 0014, lines 3-13 and page 2, paragraph 0018, lines 4-12), a power source (page 2, paragraph 0016, lines 1-12 and paragraph 0019, lines 1-6, and as shown by reference character 9 in Drawing Figure 2), a control driver (page 2, paragraph 0016, lines 1-12, and as shown by reference character 6 in Drawing Figure 2), a connecting wire (page 2, paragraph 0016, lines 3-5, and as shown by reference character 11 in Drawing Figure 2), and an outer portion and plurality of seams of the wearable item (page 1, paragraph 0014, line 1, page 1, paragraph 0015, lines 1-9, and page 2, paragraph 0018, lines 1-15, and as shown by reference character 1 in Drawing Figure 1 and reference character 19 in Drawing Figures 4 and 4A).

Dependent claims 2 and 14, as amended, define a circuit means having a function interface with means for causing the flexible cable-like electroluminescent wire to switch on and

off intermittently in a random or predetermined pattern (page 1, paragraph 0009, lines 3-7 and page 2, paragraph 0019, lines 6-10, and as shown by reference character 8 in Drawing Figure 2).

Dependent claims 3 and 15, as amended, define a time-out switch (page 2, paragraph 0019, lines 16-19, and as shown by reference character 10 in Drawing Figure 2).

Dependent claims 4 and 16, as amended, define attaching means (page 1, paragraph 0014, lines 3-13 and page 2, paragraph 0018, lines 4-12).

Dependent claims 5 and 17, as amended, define a DC power source and the circuit means having a DC/AC converter (page 2, paragraph 0016, lines 5-8 and page 2, paragraph 0019, lines 1-6).

Dependent claims 6 and 18 define the power source as a dry cell battery (page 2, paragraph 0016, lines 5-6).

Dependent claims 7 and 19 define the power source as a rechargeable battery (page 2, paragraph 0016, line 6 and page 2, paragraph 0020, lines 1-2).

Dependent claims 8 and 20, as amended, define the flexible cable-like electroluminescent wire being attached to the seams of the item (page 1, paragraph 0014, lines 7-12 and page 2, paragraph 0018, lines 8-12, and as shown in Drawing Figures 1, 4 and 4A).

Dependent claims 9 and 21 define the item as a backpack (page 1, paragraph 0014, lines 1-15 and page 1, paragraph 0015, lines 1-12 and as shown in by reference character 1 in Drawing Figure 1).

Dependent claims 10 and 22 define the item as a waistpack (page 1, paragraph 0007, line 3).

Dependent claims 11 and 23 define the item as an article of clothing (page 1, paragraph 0007, line 3 and page 2, paragraph 0018, lines 1-15 and as shown in by reference character 19 in Drawing Figures 4 and 4A).

Dependent claims 12 and 24 define the article of clothing as a jacket (page 2, paragraph 0018, lines 1-15 and as shown in by reference character 19 in Drawing Figures 4 and 4A).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL:

1. Claims 1, 2, 13 and 14 were rejected under 35 U.S.C. 102(b) as being anticipated by Chien [U.S. 5,836,671].
2. Claims 3-10 and 15-22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chien in view of Bryan [U.S. 6,340,235].
3. Claims 11-12 and 23-24 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chien in view of Yei [U.S. 6,116,745].

ARGUMENT:

Claims 1, 3, 13 and 15 had been previously amended to correct informalities and overcome the Examiner's objections. Claims 1 and 13 were previously amended by substituting the word "having" for "comprising" in former line 4, now at lines 9 and 10. Claims 3 and 15 were previously amended by deleting the drawing reference number from the respective claims.

Claims 4 and 16 had been previously amended by deleting the word "tape" as an attaching means to overcome the Examiner's obviousness rejection.

Claim 8 contains a typographical error, the word "scams" should read "seams" in line 2.

Claims 1, 2, 3, 4, 5, 8, 13, 14, 15, 16, 17, and 20 had been amended to limit the claims to a flexible "cable-like" electroluminescent wire after final action, however, the Examiner did not enter those amendments.

Claims 1 and 13 had also been amended after final action to further limit the flexible electroluminescent wire to the properties as contained in the specification and drawing 3, again, the Examiner did not enter those amendments.

Examiner's Rejection of Claims 1, 2, 13 and 14 under 35 U.S.C. 102(b)

Regarding claims 1 and 13, Applicant again submits that Chien does not disclose a flexible cable-like electroluminescent wire. "Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." See *In re Dillon*, 919 F.2d 688, 16 USPQ2d 1827, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The Chien document discloses an electro-luminescent light strip that is neither flexible nor a cable-like wire. The flexible cable-like electroluminescent wire claimed by the Applicant is flexible in three dimensions and can conform to various shapes, such as around corners, along seams, and into a multitude of designs, such as those shown in Applicant's drawing figures 1, 4 and 4A. Chien discloses properties that can only bend on a planar surface. Chien fails to disclose and lacks the properties and advantages of cable-like flexibility asserted in Applicant's claims. The omission in Chien of disclosing those properties of its electro-luminescent light strip prevents Chien from being used as a prior art rejection under 35 U.S.C. 102(b). "Anticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, arranged as in the claims." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984), (citing *Connell v. Sear, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983) (emphasis added)).

Chien also fails to disclose a cable-like wire. The light strip, or light panel, disclosed in Chien lacks the versatility, flexibility, and durability of the electroluminescent wire as claimed in the amended claims by Applicant. The disadvantages of Chien's electro-luminescent light strip sought to be overcome in Applicant's claims include the limited planar, one-way flexibility of Chien's light strip; that Chien's light strip is more fragile and would not withstand multiple flexing and bending; and that Chien's light strip is limited to flat areas of any articles it is placed on. Contrast Applicant's claimed flexible cable-like electroluminescent wire's flexibility, its durability and ability to withstand multiple flexing and bending, and its versatility in being able to be applied and attached to any area of an item, including perimeter seams, in any design imaginable. Chien does not show the identical invention in as complete detail as is contained in Applicant's claims. See, Richardson v. Suzuki Motor Co., 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989); ("The identical invention must be shown in as complete detail as is contained in the ... claim." Id. at 1236, 9 USPQ2d at 1920).

Regarding claims 2 and 14, Chien discloses a circuit means that has a function interface for an electro-luminescent light strip, whereas Applicant claims a circuit means with a function interface for a flexible cable-like electroluminescent wire that includes means to switch the flexible cable-like electroluminescent wire on and off intermittently in a random of predetermined pattern.

"Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." See In re Dillon, 919 F.2d 688, 16 USPQ2d 1827, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a

single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The Examiner references Chien column 4, lines 61-67, however that citation refers to claims in Chien for a dry cell battery, a manual pushbutton switch, and an adjustable strap. Chien discloses a steady, flash, sequential or random light strip, whereas Applicant claims a function interface means for a flexible cable-like electroluminescent wire to turn on and off intermittently in a random or a predetermined pattern. Each element found in claims 2 and 14, which depend upon claims 1 and 13, is not found in Chien.

Examiner's Rejection of Claims 3-10 and 15-22 under 35 U.S.C. 103(a)

Regarding claims 3-10 and 15-22 being rejected under 35 U.S.C. 103(a) as being unpatentable over Chien in view of Bryan, Applicant restates and relies upon the arguments and remarks set forth above that Chien is not a proper prior art reference. Further, the record does not appear to establish the requisite motivation for combining Chien and Bryan. Applicant argues that the independent claims 1 and 13 are non-obvious, thus all claims dependent upon those independent claims should also be non-obvious.

In analyzing the obviousness of the subject matter at issue, what must first be determined is "analogous prior art". "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with

which it deals, logically would have commended itself to an inventor's attention in considering his problem."); and Wang Laboratories Inc. v. Toshiba Corp., 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993). Chien discloses a planar light strip. Applicant discloses a three-dimensionally flexible cable-like electroluminescent wire. Bryan discloses an accessory system for containers and the like to illuminate the inside of those containers to enable to user to see inside the container. Applicant's invention illuminates the outside of wearable items for decorative and safety purposes. It appears that Chien and Bryan are not analogous prior art and should not be used as a basis for an obviousness rejection.

An obviousness determination is based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of non-obviousness. See Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); Miles Labs., Inc. v. Shandon Inc., 997 F.2d 870, 877, 27 USPQ2d 1123, 1128 (Fed. Cir. 1993).

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also In re Lee, 277 F.3d 1338, 1342-44, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002) (discussing the importance of relying on objective evidence and making specific factual findings with respect to the motivation to combine references); In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir.

1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The record does not appear to establish the requisite motivation for combining Chien and Bryan.

Regarding claims 3 and 15, the proposed combination does not teach or suggest all of the elements. Bryan discloses a “timer mechanism . . . for causing illumination . . . for a predetermined period of time upon the closing of a switch” (column 9, lines 38-40). This disclosure clearly states that the mechanism described in Bryan requires the activation (closing) of a switch which turns on the illumination for a period of time. In contrast, Applicant claims a time out switch that requires no additional activation, wherein the current is simply terminated after a set period of time. By comparison, Bryan discloses an illumination feature that is mostly “off” until activated by a switch turning the light “on” and activating the “times out” feature after a certain period of time. Applicant, however, claims an illumination feature that is mostly “on” and that no further activation is required for the timer to work. The function of the timer disclosed in Bryan is different than the function of the timer claimed by the Applicant.

Regarding claims 5 and 17, Chien discloses a DC/AC converter for a light strip, whereas Applicant claims a DC power supply and means for converting it to an AC current, thus supplying the flexible cable-like electroluminescent wire with AC current. An obviousness determination is based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of non-obviousness. See Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); Miles Labs., Inc. v. Shandon Inc., 997 F.2d 870, 877, 27 USPQ2d 1123, 1128 (Fed. Cir. 1993). The Examiner has not rejected claims 1 or 13 under the obviousness rejection set forth in 35 U.S.C. 103(a). Applicant also argues that all claims dependent upon non-obvious claims 1 and 13, therefore, should not be rejected as obvious.

Chien is not analogous prior art, as set forth above, and Chien's disclosure varies greatly from Applicant's claims, thus Applicant argues that the obviousness rejection of claims 5 and 17 should be removed.

Regarding claims 6 and 18, Applicant relies upon the same arguments and comments as set forth above in regards to claims 3 and 15, and claims 5 and 17.

Regarding claims 7 and 19, Applicant relies upon the same arguments and comments as set forth above in regards to claims 3 and 15, and claims 5 and 17. Additionally, Bryan is not analogous prior art, as argued above.

Regarding claims 8 and 20, Applicant relies upon the same arguments and comments as set forth above in regards to claims 3 and 15, and claims 5 and 17. Additionally, Applicant argues that Chien discloses a light strip, which differs significantly from Applicant's claimed flexible cable-like electroluminescent wire and relies upon the arguments above relating to those differences.

Regarding claims 9-10 and 21-22, Applicant relies upon the same arguments and comments as set forth above in regards to claims 3 and 15, and claims 5 and 17.

Examiner's Rejection of Claims 11-12 and 23-24 under 35 U.S.C. 103(a)

Applicant relies upon all of the above arguments and remarks in response to this rejection.

Additionally, Yei discloses an illuminated display panel that differs in many respects from Applicant's claimed flexible cable-like electroluminescent wire. Yei's panel attaches to flat areas of any wearable item. Applicant's flexible cable-like electroluminescent wire can attach anywhere on any surface of any wearable article. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where

there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also In re Lee, 277 F.3d 1338, 1342-44, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002) (discussing the importance of relying on objective evidence and making specific factual findings with respect to the motivation to combine references); In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The record does not appear to establish the requisite motivation for combining Chien and Yei. Neither Chien nor Yei disclose a flexible luminescent wire as claimed by Applicant.

Examiner's Advisory Action Before the Filing of an Appeal Brief mailed 09/21/2005

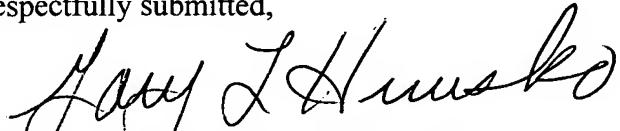
By Reply dated September 6, 2005, the Applicant amended claims 1, 2, 3, 4, 5, 8, 13, 14, 15, 16, 17, and 20 to limit the claims to a flexible "cable-like" electroluminescent wire. The Patent Examiner's response mailed on September 21, 2005 stated that the proposed amendments would not be entered because they raise new issues that would require further consideration and/or search. Specifically, the Examiner noted that the "amendment of independent claims 1 and 13, which recites a structure of the EL wire, requires a further search".

Conclusion

In consideration of the arguments set forth above, Applicant respectfully requests its appeal from the decision of the Examiner be determined in favor of Applicant and that the Examiner's objections and rejections be removed and that a timely Notice of Allowance be

issued in this case, or in the alternative, remand to the Examiner for further search as indicated by the Examiner in his Advisory Action mailed September 21, 2005.

Respectfully submitted,



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AMENDED CLAIMS APPENDIX

Listing of Claims:

1. An apparatus for lighting a wearable item, comprising: a lighting arrangement made up of a flexible electroluminescent wire, a flexible electroluminescent wire attaching means, a power source, a control driver, and a connecting wire, said control driver having a switch to turn the flexible electroluminescent wire on and off, and a circuit means, said connecting wire connecting the control driver and power source to the flexible electroluminescent wire, thereby allowing for electrical current from the power source to reach the flexible electroluminescent wire, said lighting arrangement being attached to the item, said item having an outer portion and a plurality of seams, wherein the flexible electroluminescent wire is attached to the outer portion of the item with the flexible electroluminescent wire attaching means.
2. The apparatus of claim 1, wherein the circuit means further comprises a function interface including means for causing the flexible luminescent wire to switch on and off intermittently in a random or a predetermined pattern.
3. The apparatus of claim 2, wherein the control driver further comprises a time-out switch, wherein the current is terminated after a set period of time by the operation of the time-out switch, thereby conserving both the power source and the life of the flexible electroluminescent wire.
4. The apparatus of claim 3, wherein the flexible electroluminescent wire attaching means is selected from the group consisting of glue, tape, cloth or non-abrasive staples, and stitching.
5. The apparatus of claim 4, wherein the power source is a DC power supply, and the circuit means includes means for converting DC current supplied by the power supply to an AC current and supplying the AC current to the flexible electroluminescent wire.

6. The apparatus of claim 4, wherein the power source is a dry cell battery.
7. The apparatus of claim 4, wherein the power source is a rechargeable battery.
8. The apparatus of claim 4, wherein the flexible luminescent wire is attached to the item along the item's seams.
9. The apparatus of claim 4, wherein the item is a backpack.
10. The apparatus of claim 4, wherein the item is a waist pack.
11. The apparatus of claim 4, wherein the item is an article of clothing.
12. The apparatus of claim 11, wherein in the article of clothing is a jacket.
13. A method for lighting a wearable item, comprising; a lighting arrangement made up of a flexible electroluminescent wire, a flexible electroluminescent wire attaching means, a power source, a control driver, and a connecting wire, said control driver having a switch to turn the flexible electroluminescent wire on and off, and a circuit means, said connecting wire connecting the control driver and power source to the flexible electroluminescent wire, thereby allowing for electrical current from the power source to reach the flexible electroluminescent wire, said lighting arrangement being attached to the item, said item having an outer portion and a plurality of seams, wherein the flexible electroluminescent wire is attached to the outer portion of the item with the flexible electroluminescent wire attaching means.
14. The method of claim 13, wherein the circuit means further comprises a function interface including means for causing the flexible luminescent wire to switch on and off intermittently in a random or a predetermined pattern.
15. The method of claim 14, wherein the control driver further comprises a time-out switch, wherein the current is terminated after a set period of time by the operation of the time-

out switch, thereby conserving both the power source and the life of the flexible electroluminescent wire.

16. The method of claim 15, wherein the flexible electroluminescent wire attaching means is selected from the group consisting of glue, tape, cloth or non-abrasive staples, and stitching.

17. The method of claim 16, wherein the power source is a DC power supply, and the circuit means includes means for converting DC current supplied by the power supply to an AC current and supplying the AC current to the flexible electroluminescent wire.

18. The method of claim 16, wherein the power source is a dry cell battery.

19. The method of claim 16, wherein the power source is a rechargeable battery.

20. The method of claim 16, wherein the flexible luminescent wire is attached to the item along the item's seams.

21. The method of claim 16, wherein the item is a backpack.

22. The method of claim 16, wherein the item is a waist pack.

23. The method of claim 16, wherein the item is an article of clothing.

24. The method of claim 23, wherein in the article of clothing is a jacket.

EVIDENCE APPENDIX None

RELATED PROCEEDINGS APPENDIX None.